Supreme Court of the United States

OCTOBER TERM, 1939

No. 201

BUCKSTAFF BATHHOUSE COMPANY.....Petitioner

vs.

ED. I. MCKINLEY, as Commissioner of the DEPARTMENT OF LABOR OF THE STATE OF ARKANSAS, et al.....Respondents

CERTIORARI FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR RESPONDENTS

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CONWAY PTG. CO.

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BRIEF FOR RESPONDENTS

SATEMENT

The petitioner, Buckstaff Bathhouse Company, is a corporation organized and existing under the laws of the State of Arkansas. During the period beginning the 1st day of January, 1937, and ending the 31st day of December, 1937, it had in its employ fifteen persons engaged in performing services in the operation of a bathhouse. This bathhouse was constructed and operated under a written contract entered into by the Assistant Secretary of the Interior and the Buckstaff Bathhouse Company on August 5, 1931. The land upon which the bathhouse is located is within the Hot Springs National Park.

Petitioner paid the unemployment compensation, or excise, tax levied by Section 901 of the Social Security Act, approved August 14, 1935 (Section 1600 of Internal Revenue Code). It being the duty of the Commissioner of the Department of Labor of the State of Arkansas to enforce the provisions of Act 155 of the Acts of Arkansas of 1937, cited as the "Arkansas Unemployment Compensation Law", Sections 8549 to 8569, inclusive, of Pope's Digest, the Buckstaff Bathhouse Company was called upon to pay 1.8% of the wages paid to its employees as levied by Section 7 of the Arkansas Unemployment Compensation law, Section 8555 of Pope's Digest. The Buckstaff Bathhouse Company declined to pay the tax, insisting as an excuse for such nonpayment that it was not liable to the State for the reason that: First, the State's right to levy and collect such tax had been surrendered by certain acts of the Arkansas Legislature ceding jurisdiction to the Federal Government, (These acts are contained in Sections 5638, 5649, and 5651 of Pope's Digest, and are copied in full in the Appendix to this Brief; and Appellant's Brief); Second, that the Company was exempt because it was an instrumentality of the United States, expressly exempted in Section 2 (i), (6) (5) of the Arkansas Unemployment Compensation law, Section 8550 of Pope's Digest; and Third, because the persons to whom it paid wages were independent contractors. (R. 1-3).

This claim of non-liability was denied by the Commissioner of Labor and thereupon petitioner sought to enjoin the Commissioner from collecting the tax by a petition for restraining order filed in the Chancery Court of Pulaski County, Arkansas. That Court sustained a general demurrer to the complaint and the Supreme Court of Arkansas, on appeal, affirmed the Chancery Court decree.

As the Court has observed, the Supreme Court of Arkansas denied all three of appellant's claims of non-liability in an opinion appearing in the record, pages 11 to 20, inclusive.

It is now insisted by petitioner that the State is precluded from collecting unemployment compensation contributions from the employer, Buckstaff Bathhouse Company, because of the provisions of the various Acts of the General Assembly of Arkansas ceding jurisdiction.

We shall endeavor to answer the argument of petitioner in a discussion of the following propositions:

I. NO JUSTICIABLE CONTROVERSY IS PRESENTED BY APPELLANT.

II. THE RIGHT AND PRIVILEGE OF THE STATE OF ARKANSAS TO LEVY AND COLLECT UNEMPLOYMENT COMPENSATION TAX HAS NOT BEEN CEDED.

III. IF SUCH RIGHT TO TAX WAS CEDED, IT WAS RESTORED BY CONGRESS BY THE PASSAGE OF THE SOCIAL SECURITY ACTS.

ARGUMENT

I.

It is alleged in the complaint that was filed in the Pulaski Chancery Court that the levy of the tax of 1.8% upon wages paid the employees of the petitioner during the year 1937 "will irreparably damage the plaintiff for which it has no complete and adequate remedy at law". (R. 3).

As heretofore stated, petitioner paid to the Commissioner of Internal Revenue the excise tax of 2% upon the wages paid its employees during the year under the provisions

of Section 901 of the Social Security Act, Section 1600 of Internal Revenue Code. The Section immediately following in the Social Security Act provides that "The taxpayer may credit against the tax imposed by Section 901 the amount of contributions with respect to employment during the taxable year paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a state law. The total credit allowed to a taxpayer under this Section on contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90% of the tax against which it is credited, and the credit shall be allowed only for contributions made under the laws of states certified for the taxable year, as provided in Section 903".

It is therefore seen that the payment of the tax by the taxpayer into the unemployment fund of the State of Arkansas would not have resulted in an "irreparable injury", or any injury whatever. It would have received credit for the full amount as against the levy made by the Social Security Act, and paid by the employer.

It is true that on February 12, 1937, Thomas H. Eliot, General Counsel of the Social Security Board, wrote to the Acting Director of the National Park Service a letter, in which he stated that the Treasury Department had ruled that no credit would be allowed against tax payments to a State Fund made voluntarily by an employer without his becoming unqualifiedly subject to the State Act. (This letter is printed in full in the Appendix).

This ruling of the Treasury Department was probably erroneous, and was certainly inapplicable, but even if it were correct, and if it raised a doubt in the mind of the taxpayer as to its right to receive credit upon its Federal tax, the Arkansas Unemployment Compensation Law, in

Section 8, Section 8556 of Pope's Digest, provides as follows:

> "An employing unit, not otherwise subject to this Act, which files with the commissioner its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers".

By a compliance with this provision of the Arkansas law, the taxpayer would have removed all doubt existing at the time it was requested to pay, as to its right to credit.

The act of making an election could have been exercised by petitioner at any time, and it would have received credit against the federal levy if such payment had been made prior to January 31, 1938.

The action in the Pulaski Chancery Court was not filed until August 19, 1938. At that time, as the law then provided, petitioner had lost its right to pay the 1.8% into the State Fund and receive full credit therefor as against the federal levy, but the right of petitioner to receive this credit was again extended by the Congress in the passage of the Amendments to the Social Security Act of 1939, and its approval on August 10, 1939. (Public Act No. 379, 76th Congress).

The Arkansas Supreme Court had, in the meantime, rendered its decision herein, which removed all doubt as to the liability of the taxpayer in this case to the State for the unemployment compensation tax, and Congress, in the last Act above-mentioned, reopened the right to receive credit by providing as follows:

"Sec. 902. (a) Against the tax imposed by Section

901 of the Social Security Act for the calendar year 1936, 1937, or 1938, any taxpayer shall be allowed credit for the amount of contributions with respect to employment during such year paid by him into the unemployment compensation fund under a state law. . . . .

(1) Before the sixtieth day after the date of the enactment of this act."

Sub-section (d) of the same Section provides:

"Refund of the tax (including penalty and interest collected with respect thereto, if any) based on any credit allowable under sub-section (a), (b) and (h) may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund".

In due time petitioner in this case, of course, took advantage of this provision of the Act of Congress and paid into the Unemployment Compensation Fund of the State of Arkansas the 1.8% of wages paid during the year 1937, and filed its application for refund.

Petitioner has not suffered any injury. It paid only such tax as was levied by the State after Congress passed Amendments to the Social Security Act, and it has received, or will receive, a refund from the United States Treasury for the full amount paid to the State, which does not exceed 90% of the federal levy.

Congress, by amending Section 901 of the Social Security Act, afforded petitioner, and all others that might have been in its position, the right to adjust all tax differences with state unemployment compensation agencies that arose prior to August 10, 1939, and then in the same Act, by amending Section 1606 of the Internal Revenue Code, it

forever set at rest all questions as to liability of such employers by the enactment of the following law:

> "*Section 1606 (d).* No person shall be relieved from compliance with the state unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any state shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such places were not owned, held, or possessed by the United States".

As the situation exists, the taxpayer in this case has suffered, and will suffer, no actual injury or damage because of the application and enforcement of the State statute. It is well established that an issue is not justiciable unless there is substantial injury or damage suffered, or about to be suffered, by him who seeks judicial relief. *Jeffrey Mfg. co. v. Blagg,* 235 *U. S.* 571, 575, 576; *Gorieb v. Fox,* 274 *U. S.* 603, 606; 32 *C. J.* 51, *Title,* "*Injunction,*" sub-title, "Irreparable Injuries."

In the case of *In re Knowles,* 295 *Pa.* 571, 145 *Atl.* 797, the Commonwealth of Pennsylvania was proceeding to enforce a statute imposing estate taxes. Such payment of taxes to the Commonwealth of Pennsylvania entitled the taxpayers to credit against taxes imposed by federal statute. The Court assumed that the State statute was contrary to the State Constitution but it held that such argument was not available to the taxpayer because he suffered no injury by paying State tax. The Court said:—

> "It is unnecessary to continue the discussion along this line, however, for none of the points of attack against the act of 1927, made by appellants, are involv-

ed in this case, since, as before said, appellants are in no wise injured by any provision of that statute; indeed, so far as the main feature of this act is concerned, it is difficult to perceive how it can harm any one taking estates or having an interest in estates taxed thereunder, because, in each instance, if the additional tax created by the act was not paid to the commonwealth, the same amount would have to be paid to the national government, and, when paid to the commonwealth, the amount in question is allowed by the national government to the estate making the payment. As this Court said in Gentile v. P. & P. Ry. Co., supra, it is of no moment to complainant whether the amount to be paid goes to one person or another, so long as his liability is not prejudicially altered; the same principle applies here.

See also Opinion of the Justices, 85 N. H. 522, 154 Atl. 633.

II.

The State of Arkansas was admitted into the Union by Act of Congress approved June 16, 1836. (Pope's Digest, Vol. 1, p. 262). It is conceded by appellant that the Act of Admission contained no reservation of jurisdiction in the Federal Government, and that such jurisdiction as the Federal Government has over the lands within the Hot Springs National Park is found only in the Acts of the General Assembly of the State of Arkansas above-referred to. Each of these Acts contains the following proviso:—

"This grant of jurisdiction shall not prevent the execution of any process of the State, civil or criminal, on any person who may be on such reserve or premises; Provided, further, that the right to tax all struc-

tures and other property in private ownership on the Hot Springs Reservation, accorded the State by the Act of Congress, approved March 3, 1891, is hereby reserved to the State of Arkansas."

Each of these Acts contains also the following limitation upon the exercise of jurisdiction by the United States:—"To be exercised so long as the same shall remain the property of the United States."

Prior to the passage of the Acts of the General Assembly ceding jurisdiction the State of Arkansas had full power and authority to tax all privately owned property. At the time of the passage of these Acts the State exercised only the right to tax property according to its assessed value. Up to the time of the passage of those Acts, and for many years thereafter, property within the Hot Springs National Park, could have been subjected only to an *ad valorem* tax. It was only the right of the State to levy and assess an *ad valorem* tax against the *real property* within the reservation that was ceded in these Acts of the General Assembly.

The Act of Congress of 1891 emphasizes the right of the State to collect all other taxes except *ad valorem* taxes on real estate, and serves to clarify the Acts of the General Assembly, for the Federal Act states:—"The consent of the United States is hereby given for the taxation under the laws of the State of Arkansas applicable to the equal taxation of personal property in that State as personal property of all structures and other property in private ownership on the Hot Springs Reservation." U. S. C. A. 365.

The State has not violated this agreement in levying an unemployment compensation tax against employers who are lessees of property within the Hot Springs National Park.

Petitioner concedes that the Supreme Court of Arkansas was correct in its opinion rendered on June 10, 1939, in the instant case, when it said: "The tax laid by Act 155 is not a tax on personal property, nor is it in any sense a property tax." The Court in that statement used the term "property tax" in its usual and customary sense of an *ad valorem* tax.

The Supreme Court of Arkansas was equally correct in the following statement found in the opinion:—"The power conferred by the Act (of Congress) of 1891 to tax personal property impliedly carried with it the *right to tax the use of such property* to the same extent and in the manner similar to property not within the Reservation." (R. 19).

This statement of the Arkansas Supreme Court is supported by the case of *Henneford v. Silas Mason*, 300 U. S. 577, in which it was stated:—"The privilege of use is only one attribute, among many, of the bundle of privileges that make up property or ownership. A state is at liberty, if it pleases, to tax them all collectively, or to separate the faggots and lay the charge distributively." This same doctrine is found in the earlier case of *N. C. & St. L. Ry. v. Wallace*, 288 *U. S.* 249. "The power to tax property, the sum of all the rights and powers incident to ownership, necessarily includes the power to tax its constituent elements," and, it was also said in the case of *Corliss v. Bowers*, 281 *U. S.* 376, that:—"Taxation is not so much concerned with the refinements of title as it is with the actual command over the property taxed, the actual benefit for which the tax is paid."

Petitioner has quoted Article XVI, Section 5 of the Constitution of the State of Arkansas of 1874, page 149, Vol. 1, Pope's Digest of the Statutes of Arkansas. The two sections immediately following are as follows:

"Section 6. All laws exempting property from taxation other than as provided in this Constitution shall be void."

"Section 7. The power to tax *corporations* and *corporate property* shall not be surrendered or suspended by any contract or *grant* to which the State may be made a party."

The State's right of taxation in the Hot Springs National Park was fully explained in *Ex parte Gaines*, 56 Ark. 227, 19 S. W. 602, wherein it is said:

"No part of the Reservation, while owned by the United States, can be subjected to taxation by the State. Van Brocklin v. Tennessee, 117 U. S. 151. But when the government parts with its title, or any interest therein, the property or interest which the government parts with becomes subject to taxation. When it makes a lease to an individual of any interest or privilege in its lands within the Reservation, the interest of the lessee, whatever it may be, may be taxed, subject however to all the rights and interests which the United States retains in the property.

* * *

"The interest of the lessee in the land is not the property of the United States, and it is not a means employed by the government to obtain a governmental end. The power to tax that interest does not involve therefore the power to destroy or disturb any interest of the United States government."

* * *

"All property in Arkansas belonging to individuals is subject to taxation except such as is especially exempted by the Constitution. Nothing else is or can be

made exempt. Little Rock, etx. R. Co. v. Worthen, 46 Ark. 312. The interest which the appellant acquired by his lease was property, and is not exempt under the law. It was the duty of the assessor to return it for taxation."

The imposition of the unemployment compensation tax is not a charge upon any property within the Reservation, and certainly is not and can never be a charge upon the property of the United States. The obligation to pay the contributions is a personal one, operating *in personam*. The obligation is enforced only against the employer. The provisions for enforcing payment are contained in Section 14 (b) of the Unemployment Compensation law, Section 8562 (b) of Pope's Digest. These provisions merely give right to "a civil action in the name of the commissioner." The State in each of the Cession Acts reserved the right to execute any process of the State, civil or criminal, on any person who may be on such reserve or premises. The enforcement of the Unemployment Compensation law can, in any event, only affect the interest of the lessee. It was said by the Arkansas Supreme Court in the case of *Ex parte Gaines, supra*, that:—"The interest of the lessee in the land is not the property of the United States." Each of the Session Acts, as we have heretofore pointed out, provides that the jurisdiction of the United States is "to be exercised so long as the same shall remain the property of the United States."

The effect of the cases of *Williams v. Arlington Hotel Company*, 22 *F.* (2d) 669, and *Arlington Hotel v. Fant*, 278 *U. S.* 439, is not nullified by the decision of the Supreme Court in this case as counsel for petitioner argue. Those cases did not involve the taxation of personal property within the Reservation, or the taxation of privileges inci-

dent to the use of such structures. The acts involved in those cases were regulatory acts in which the state was attempting to exercise its police powers. Such regulations, of course, affected the Government's right to use its lands, and could have seriously hampered the Government in the exercise of its power to lease lands within the Reservation.

The distinction between the right of the state to impose a license fee and subject persons and property under the jurisdiction of the United States in its national parks to police regulations, and the right of the state to tax is made clear in the case of *Collins v. Yosemite Park & Curry Company*, 304 *U. S.* 517. In that case the Court held that, because the State of California had ceded exclusive jurisdiction to the United States over the Yosemite National Park area, it was without power to require certain operators within that area to comply with various conditions before the granting of a license, but a different conclusion was reached as to the right to tax, because the cession law reserved to the state "the right to tax persons and corporations, their franchises and property." If the reservation to the State of California of the right to tax persons and corporations, their franchises and property, saved to that state the right to collect excise taxes from persons operating within the Park upon the sale of beer and wine, we submit that the State of Arkansas has the right to levy and collect an excise tax on the privilege of employment by the holder of a leasehold interest, which is unquestionably taxable.

It was said by the Supreme Court of the United States in the case of *Collins v. Yosemite Park & Curry Company, supra:*—"As the respective acts of the state and nation were in the nature of a mutual declaration of rights, this is not an occasion for strict construction of a grant by a state

limiting its taxing powers," and, further, that "Such exempting statutes are to be given liberal construction on behalf of a state."

III.

If it may be said by a strict and technical construction of the Acts of the Arkansas Legislature ceding jurisdiction to the United States that it reserved only the right to levy and collect an *ad valorem* tax on all structures and other property in private ownership within the Hot Springs National Park, it is submitted that the right to levy and collect an unemployment compensation tax from petitioner, and others in its position, was at least impliedly bestowed upon the State by the passage of the Social Security Act of 1935. By Title IX of the Act the Congress levied upon every employer, defined in Section 901 of the Act, an excise tax with respect to employment. At the same time and in the same Act provision was made for an unemployment trust fund into which would be paid taxes collected by the states from the same employers upon whom the federal tax was laid. This action on the part of the United States, and the legislative response thereto on the part of the State, were described by Mr. Justice Stone in the case of *Carmichael, et al v. Southern Coal & Coke Company*, 301 *U. S.* 495, in these words: "Together, the two statutes before us embody a cooperative legislative effort by state and national governments for carrying out a public purpose common to both, which neither could fully achieve without the cooperation of the other." This thought was approached by the Supreme Court of Arkansas in its opinion when it was said;— "Imposition of the tax here does not in any sense interfere with the government's business. On the contrary, the express social policies of the government are sustained and promoted." (R. 20).

It is respectfully submitted that the decision of the Supreme Court of Arkansas in this case should be affirmed.

W. L. POPE,
Counsel for Respondents.

APPENDIX

Section 5638 of Pope's Digest of the Statutes of Arkansas: (Omitted since this Section is printed in full in Appellant's Brief).

Section 5659 of Pope's Digest of the Statutes of Arkansas:

> "Exclusive jurisdiction over that part of the Hot Springs Reservation known and described as block eighty-two on the official plat of the United States Hot Springs Commission is hereby ceded and granted to the United States of America to be exercised so long as the same shall remain the property of the United States. *Provided*, that this grant of jurisdiction shall not prevent the execution of any process of the State, civil or criminal, on any person who may be on such reservation or premises; *Provided, further*, that the right to tax all structures and other property in private ownership on the Hot Springs Reservation accorded the State by the Act of Congress approved March 3, 1891, is hereby reserved to the State of Arkansas as respects the tract hereby ceded."

Section 5651 of Pope's Digest of the Statutes of Arkansas:

> "Exclusive jurisdiction over all lands now or hereafter included in Hot Springs National Park in the State of Arkansas and which have not heretofore been included in acts of the General Assembly of the State of Arkansas is hereby ceded and granted to the United States of America, to be exercised so long as the same shall remain the property of the United States. *Provided*, that this grant of jurisdiction shall not prevent the execution of any process of the State, civil or crim-

inal, on any person who may be in the park or on park premises; provided further, that the right to tax all structures and other property in private ownership on the Hot Springs National Park is hereby reserved to the State of Arkansas."

Letter from Thos. H. Eliot, General Counsel of the Social Security Board, Washington, D. C.:

"Social Security Board
Washington, D. C.

February 12, 1937.

"To A. E. Demaray,
Act. Director of the National Park Service,
Department of the Interior,
Washington, D. C.

Dear Mr. Demaray:—

In your letter of January 21, 1937, you asked me what assurance can be given by the Social Security Board to a National Park Operator in the State of California, that contributions paid by him to the California Unemployment Compensation Fund, will be allowed as a deduction against the Federal Tax imposed by Title 9 of the Social Security Act.

The Treasury Department has ruled that no credit will be allowed against such tax for payments to a State Fund made voluntarily by an employer without his becoming unqualifiedly subject to the State Act, or liable to render such reports as may be required, or to pay such contributions at such times and in such manner as may be subscribed by State Law or by administrative officers in pursuance thereof.

This ruling appears to apply to a National Pary operator under the circumstances in your letter.

Sincerely yours,

(s) Thos. H. Eliot,
General Counsel."

SUPREME COURT OF THE UNITED STATES

No. 201.—October Term, 1939.

Buckstaff Bath House Company, Petitioner, vs. Ed I. McKinley, as Commissioner of the Department of Labor of the State of Arkansas, et al.

On Writ of Certiorari to the Supreme Court of the State of Arkansas.

[December 18, 1939.]

Mr. Justice Douglas delivered the opinion of the Court.

Section 901 of the Social Security Act (49 Stat. 620) levies an excise tax, equal to specified percentages of total wages paid, on "every employer" of eight or more persons with respect to their "employment". By § 902 the taxpayer may credit against this tax the amount of contributions paid by him into an unemployment fund under a state law, such credit however not to exceed 90 per cent of the tax and to be allowed only for contributions made under the laws of states approved and certified by the Social Security Board in accordance with the standards prescribed in § 903. By § 907 the term "employment" is defined to mean "any service, of whatever nature, performed within the United States by an employee for his employer" except, *inter alia*, service performed "in the employ of the United States Government or of an instrumentality of the United States".

Petitioner is an Arkansas corporation, organized for profit and with its only place of business situated on the United States Government Reservation known as Hot Springs National Park. It operates a bath house, which it erected and equipped, under a long term lease from the Secretary of the Interior. By the terms of that lease the operation and use of the bath house facilities are subject to certain control by the Department of the Interior, which in the main relate to the number of bath tubs which may be used, the charges to the public, the qualifications of employees, the maintenance and care of the premises, a prohibition of employment of agents to solicit patronage, and control over an assignment or transfer of the lease or any interest therein.

Respondents are officials of the State of Arkansas charged with the duty of enforcement of the Arkansas Unemployment Compensation Law,[1] an act reciprocal to, and integrated with, the Social Security Act.[2] Pursuant to that act respondents sought to collect from petitioner as an employer the required contributions for the calendar year 1937. Petitioner paid into the Treasury of the United States the tax required by the Social Security Act for that period. But it refused to pay the state tax and sued in the state court to enjoin its collection on the grounds, *inter alia*, that it is an instrumentality of the United States and that certain acts of Congress and statutes of Arkansas exempt it from such taxation. The Supreme Court of Arkansas affirmed a decree sustaining a demurrer to the bill and dismissing it, on the grounds that the Arkansas statute was applicable to petitioner and that, on construction of the acts in question, petitioner did not have the claimed immunity. We granted certiorari because that decision was asserted to be repugnant to the acts vesting exclusive jurisdiction over the Hot Springs Reservation in the United States.

Petitioner's contention here, as below, is based primarily on the Act of Congress of March 3, 1891 (26 Stat. 842) whereby the consent of the United States was given "for the taxation, under the authority of the laws of the State of Arkansas applicable to the equal taxation of personal property in that State, as personal property, of all structures and other property in private ownership on the Hot Springs Reservation".[3] Petitioner points out that the tax

[1] Act No. 155, approved February 26, 1937; Pope's Digest, §§ 8549 *et seq.*

[2] The Arkansas Unemployment Compensation Law was certified and approved by the Social Security Board under § 903 on March 9, 1937. See Third Annual Report of the Social Security Board, 1938, p. 175.

[3] The cession act of Arkansas was Act No. 30, approved February 21, 1903. It "ceded and granted" to the United States "exclusive jurisdiction" over the area in question "to be exercised so long as the same shall remain the property of the United States; provided, that this grant of jurisdiction shall not prevent the execution of any process of the State, civil or criminal, on any person who may be on such reservation or premises; provided, further, that the right to tax all structures and other property in private ownership on the Hot Springs reservation accorded the State by the Act of Congress approved March 3, 1901, is hereby reserved to the State of Arkansas." This cession was accepted by the Act of Congress of April 20, 1904 (33 Stat. 187). As to Arkansas' asserted right to tax property in the reservation prior to the Act of Congress of March 3, 1891, see Ex parte Gaines, 56 Ark. 227.

For earlier Acts of Congress dealing with the rights of the United States to the Hot Springs Reservation see 4 Stat. 505; 20 Stat. 258. The early history of conflicting claims to these hot springs is reviewed in the Hot Springs Cases, 92 U. S. 698. See also Arlington Hotel Co. v. Fant, 278 U. S. 439.

imposed by the Social Security Act against which appropriate credits may be made for contributions under state laws is laid, as stated by this Court in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 578, "as a duty, an impost or an excise upon the relation of employment"; and that as held by the Supreme Court of Arkansas the tax in question is "not a tax on personal property; nor is it, in any sense, a property tax". Therefore, petitioner concludes that the United States did not confer on the state of Arkansas the power to impose such a tax but retains its sovereign jurisdiction in that regard since the power of Arkansas to tax was limited to the enumerated property taxes.

We agree with the Supreme Court of Arkansas that the state had jurisdiction to impose the tax in question.

There can be no question but that petitioner is liable for the tax levied by § 901 of the Social Security Act, unless it is exempted by that portion of § 907 which relieves "an instrumentality of the United States" from that duty. But it seems clear that petitioner is not, within the meaning of the Social Security Act, such an instrumentality. The mere fact that a private corporation conducts its business under a contract with the United States does not make it an instrumentality of the latter. *Fidelity & Deposit Co.* v. *Pennsylvania*, 240 U. S. 319. Petitioner's lease from the Secretary of the Interior did not convert it into such an instrumentality. Petitioner "is engaged in its own behalf, not the government's, in the conduct of a private business for profit". See *Federal Compress & Warehouse Co.* v. *McLean*, 291 U. S. 17, 23. Though it acts with the Government's permission and has received a privilege from the Government, it does not exercise that privilege on behalf of the latter. See *Broad River Power Co.* v. *Query*, 288 U. S. 178, 180. The control reserved by the Government for protection of a governmental program and the public interest is not incompatible with the retention of the status of a private enterprise. See *Federal Compress & Warehouse Co.* v. *McLean*, *supra*. That control, being wholly supervisory, is not to be differentiated from the type of control which the United States may reserve over any independent contractor without transforming him into its instrumentality. See *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 149. In effect, petitioner concedes the point by admitting its liability under the Social Security Act.

That petitioner is subject to the Social Security Act is extremely relevant to the solution of the problem at hand. For that Act laid the foundation for a cooperative endeavor between the states and the nation to meet a grave emergency problem. As pointed out by this Court in *Steward Machine Co.* v. *Davis, supra*, p. 588, that Act was an attempt to find a method by which the states and the federal government could "work together to a common end". Prior thereto many states had "held back through alarm lest, in laying such a toll upon their industries, they would place themselves in a position of economic disadvantage as compared with neighbors or competitors", *id.*, p. 588. The Act was designed therefore to operate in a dual fashion—state laws were to be integrated with the Federal Act; payments under state laws could be credited against liabilities under the other. That it was designed so as to bring the states into the cooperative venture is clear. The fact that it would operate though the states did not come in does not alter the fact that there were great practical inducements for the states to become components of a unitary plan for unemployment relief. It is this invitation by the Congress to the states which is of importance to the issue in this case. For certainly, under the coordinated scheme which the Act visualizes, when Congress brought within its scope various classes of employers it in practical effect invited the states to tax the same classes. Hence, if there were any doubt as to the jurisdiction of the states to tax any of those classes it might well be removed by that invitation, for in absence of a declaration to the contrary, it would seem to be a fair presumption that the purpose of Congress was to have the state law as closely coterminous as possible with its own. To the extent that it was not, the hopes for a coordinated and integrated dual system would not materialize.

Hence, it is our view that on the facts of this case, Congress has given Arkansas implied authority to tax petitioner under its Unemployment Compensation Law since the Congress has included under the Social Security Act employers such as petitioner. Clear evidence of a contrary intention would, of course, negative the existence of the implied authority. But here there is none. That conclusion is strengthened by the exemption of certain classes of employers from the sweep of the Federal Act. Thus, the exclusion of federal instrumentalities from the scope of the Federal Act, and hence from the complementary state systems, emphasizes the pur-

pose to exclude from this statutory system only that well defined and well known class of employers who have long enjoyed immunity from state taxation. Had it been desired to exempt the equally well known class, of which petitioner is a member, so as to save it from reciprocal state systems, it would seem that an equally clear exception would have been made.

Whether the same result would follow in case the cession act had absolutely forbidden a state to impose any tax on petitioner we need not decide. For here Arkansas did have a prior express power to tax petitioner's property. The implied authority which we here find to exist is therefore used not to override an earlier express authority but merely to extend it to a degree. For in final analysis the Arkansas tax does have some relation to the use of petitioner's property. The existence of the implied authority does not therefore do violence to the earlier statutory grant.

Affirmed.

Mr. Justice REED concurs on the ground that the Act of Congress of March 3, 1891 (26 Stat. 842) in which the United States consented "for the taxation . . . as personal property, of all structures and other property in private ownership on the Hot Springs Reservation," should be interpreted to give consent to the application of the Arkansas Unemployment Compensation Law. *Collins* v. *Yosemite Park*, 304 U. S. 518, 532, 534.

A true copy.

Test:

Clerk, Supreme Court, U. S.